

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

April 22, 2002

IN RE: PETITION FOR ARBITRATION)
OF THE INTERCONNECTION)
AGREEMENT BETWEEN AT& T)
COMMUNICATIONS OF THE SOUTH)
CENTRAL STATES, INC., TCG)
MIDSOUTH, INC., AND BELL SOUTH)
TELECOMMUNICATIONS, INC.)
PURSUANT TO 47 U.S.C. § 252)

DOCKET NO.

00-00079

ORDER GRANTING IN PART REQUESTS
FOR RECONSIDERATION AND CLARIFICATION

This matter came before the Directors of the Tennessee Regulatory Authority ("Authority"), acting as arbitrators, immediately following the March 12, 2002 Authority Conference for consideration of *AT&T and TCG Petition for Reconsideration of Initial Order, BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification*, and the responses thereto.

I. Factual and Procedural History

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively "AT&T") filed a petition for arbitration pursuant to Section 252 of the Telecommunications Act of 1996 on February 4, 2000. BellSouth Telecommunications, Inc. ("BellSouth") filed a response to the petition on February 29, 2000. At the March 14, 2000 Authority Conference, the Directors accepted the arbitration, appointed themselves as arbitrators, appointed a Pre-Arbitration Officer, and directed the parties to participate in substantive mediation.¹

¹ See *Order Accepting Arbitration, Appointing Pre-Arbitration Officer and Directing Mediation*, p. 2 (May 18, 2000).

The Directors, acting as arbitrators, held a hearing on the disputed issues on April 9 and 10, 2001. On August 7, 2001, AT&T filed a letter notifying the Authority that AT&T and BellSouth had settled Issues 5 and 9. The Arbitrators deliberated the merits of all outstanding issues immediately following the regularly scheduled Authority Conference on September 25, 2001 and entered the *Final Order of Arbitration Award* on November 29, 2001.

BellSouth filed *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* ("BellSouth's Motion") on December 14, 2001 seeking reconsideration of Issues 2, 3, 14, and 19 and clarification of Issues 15 and 18(b) and (c). On that same day, AT&T filed *AT&T and TCG Petition for Reconsideration of Initial Order* ("AT&T's Petition") requesting reconsideration of Issues 10 and 12. AT&T filed a memorandum in opposition to BellSouth's Motion on December 27, 2001, and BellSouth filed a response to AT&T's Petition on January 14, 2002.

Immediately following the December 18, 2001 Authority Conference, the Arbitrators considered AT&T's Petition and BellSouth's Motion. The Arbitrators determined that there was sufficient cause to reconsider and clarify the *Final Order of Arbitration Award*. Therefore, the Arbitrators, pursuant to Tenn. Code Ann. § 4-5-317, granted BellSouth's Motion and AT&T's Petition and stated that they would determine the merits of the requests for reconsideration at a future date.² On March 12, 2002, the Arbitrators deliberated the merits of the requests for reconsideration and clarification following a regularly scheduled Authority Conference.

² See *Order Granting Requests for Reconsideration and Clarification*, p. 3 (Feb. 26, 2002).

II. ISSUE 2 - WHAT DOES "CURRENTLY COMBINES" MEAN AS THAT PHRASE IS USED IN 47 C.F.R. SECTION 51.315(B)?

AND

III. ISSUE 3 - SHOULD BELL SOUTH BE PERMITTED TO CHARGE A "GLUE CHARGE" WHEN BELL SOUTH COMBINES NETWORK ELEMENTS?

In the *Final Order of Arbitration Award*, the Arbitrators "voted unanimously to define 'currently combines' to include any and all combinations that BellSouth currently provides to itself anywhere in its network" and prohibited BellSouth from charging a "glue charge" when providing unbundled network element ("UNE") combinations.³ BellSouth argues that this ruling is contrary to current legal authority.⁴ AT&T counters that BellSouth has failed to raise new law or facts to support its argument.⁵

BellSouth's Motion contains the same arguments raised by BellSouth prior to the Arbitrators' deliberations of this issue on September 25, 2001. AT&T correctly states that there is no legal authority before the Arbitrators that was not previously presented. Prior to deliberating this issue the Arbitrators fully considered the parties' arguments and the legal authority cited therein. For the foregoing reasons, the Arbitrators voted that the *Final Order of Arbitration Award* shall stand as issued.

IV. ISSUE 10 - SHOULD BELL SOUTH BE ALLOWED TO AGGREGATE LINES PROVIDED TO MULTIPLE LOCATIONS OF A SINGLE CUSTOMER TO RESTRICT AT&T'S ABILITY TO PURCHASE LOCAL CIRCUIT SWITCHING AT UNE RATES TO SERVE ANY OF THE LINES OF THAT CUSTOMER?

In the *Final Order of Arbitration Award*, the Arbitrators stated:

Although the FCC's intent is not clearly stated, the *Third Report and Order* does provide guidance. The FCC chose to utilize the term "customer" throughout its discussion, rather than "customer location." Hypothetically, if the Arbitrators ruled

³ *Final Order of Arbitration Award*, p. 12 (Nov. 29, 2001).

⁴ See *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification*, p. 3 (Dec. 14, 2001).

⁵ See *AT&T's Memorandum in Opposition to BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification*, p. 2 (Dec. 27, 2001).

that BellSouth is not allowed to aggregate customer lines, then AT&T would be able to capture a customer with three hundred (300) lines divided equally between one hundred (100) locations and serve all lines with unbundled switching. This outcome is contrary to the language and intent of FCC Rule 51.319(c)(2). Based on the foregoing, the Arbitrators voted to permit BellSouth to aggregate lines provided to multiple locations of a single customer to determine compliance with FCC Rule 51.319(c)(2).⁶

AT&T asserts that the Authority should reconsider this decision "because it is inconsistent with the development of local exchange competition in Tennessee and with a recent decision of the Florida Public Service Commission ("FPSC") in the arbitration of a similar interconnection agreement in that state."⁷ In support of its position, AT&T argues that the Arbitrators would promote competition as required by Tenn. Code Ann. § 65-4-123 if they reversed their previous decision.⁸ BellSouth counters that the presentation of the FPSC's decision is an insufficient basis upon which to alter the Arbitrators' decision and notes that the Georgia Public Service Commission has ruled in opposition to AT&T's position.⁹

During the deliberations, the Arbitrators found that the application of their ruling as memorialized in the *Final Order of Arbitration Award* to certain factual scenarios would not promote competition. To explain, using the hypothetical contained in the above-quoted paragraph, AT&T could not obtain unbundled local switching if it captured only one location with three lines, because the customer has a total of three hundred lines. Such an application of the Arbitrators' ruling and FCC Rule 51.319(c)(2) could have anticompetitive effects in contravention of the policy

⁶ *Final Order of Arbitration Award*, p. 20 (Nov. 29, 2001) (footnotes omitted).

⁷ *AT&T and TCG Petition for Reconsideration of Initial Order*, p. 3 (Dec. 14, 2001). The FPSC held: "BellSouth will not be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA, to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer." *In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U. S. C. Section 252*, Docket No. 000731-TP, Order No. PSC-01-1951-FOF-TP, *Order Denying Reconsideration, Correcting Final Order, and Granting Motion for Extension of Time*, p. 86-87 (Sept. 28, 2001).

⁸ *See id.* at 4-5.

⁹ *See BellSouth Telecommunications, Inc.'s Response to AT&T's Motion for Reconsideration*, pp. 3-4 (Jan. 14, 2002).

of the State of Tennessee¹⁰ and the purpose of the Telecommunications Act of 1996.¹¹ Therefore, in order to avoid this outcome, the Arbitrators voted to clarify their ruling as follows. Although BellSouth can aggregate lines of a customer running from multiple locations for the purpose of determining if BellSouth is obligated to provide unbundled local switching pursuant to FCC Rule 51.319(c)(2), this aggregation must be based on each location within the Nashville Metropolitan Statistical Area served by AT&T. AT&T is entitled to purchase unbundled local switching from BellSouth if it serves less than four lines of any customer. For example, assuming three (3) lines per location, if AT&T serves one (1) location, then pursuant to FCC Rule 51.319(c)(2) unbundled local switching would be available to AT&T. If, however, AT&T serves two (2) or more locations, again assuming three (3) lines per location, then unbundled local switching would not be available to AT&T.

V. ISSUE 12 - WHEN AT&T AND BELL SOUTH HAVE ADJOINING FACILITIES IN A BUILDING OUTSIDE BELL SOUTH'S CENTRAL OFFICE, SHOULD AT&T BE ABLE TO PURCHASE CROSS CONNECT FACILITIES TO CONNECT TO BELL SOUTH OR OTHER CLEC NETWORKS WITHOUT HAVING TO COLLOCATE IN BELL SOUTH'S PORTION OF THE BUILDING?

In the *Final Order of Arbitration Award* the Arbitrators determined that "AT&T's condominium space is not part of BellSouth's premises and that AT&T must collocate at BellSouth's

¹⁰ Tenn. Code Ann. § 65-4-123 sets forth the telecommunications service policy for Tennessee. This section provides: The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable.

Tenn. Code Ann. § 65-4-123 (Supp. 2000).

¹¹ Congress expressed the purpose of the Telecommunications Act of 1996 as follows: "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

premises before interconnecting to BellSouth's facilities."¹² AT&T argues that the Arbitrators should reconsider their decision because of a subsequent decision of the FPSC in favor of AT&T's position.¹³ BellSouth implies that AT&T's characterization of the FPSC's decision is erroneous and contends that AT&T fails to address the advantage AT&T would receive over its competitors if the Arbitrators modified their decision as AT&T requests.¹⁴

Having carefully considered the parties' arguments, the Arbitrators find that their earlier decision is consistent with the decision of the United States Court of Appeals, District of Columbia Circuit¹⁵ and the orders of the Federal Communications Commission ("FCC").¹⁶ Therefore, the Arbitrators voted that the *Final Order of Arbitration Award* shall stand as issued.

VI. ISSUE 14: HAS BELL SOUTH PROVIDED SUFFICIENT CUSTOMIZED ROUTING IN ACCORDANCE WITH STATE AND FEDERAL LAW TO ALLOW IT TO AVOID PROVIDING OPERATOR SERVICES/DIRECTORY ASSISTANCE ("OS/DA") AS A UNE?

In the *Final Order of Arbitration Award*, the Arbitrators required BellSouth to "continue offering OS/DA as a UNE until it can demonstrate that it has implemented a sufficient customized routing solution in Tennessee."¹⁷ In support of this conclusion, the Arbitrators found that "BellSouth's customized routing solutions have been insufficiently tested" and that, based on

¹² *Final Order of Arbitration Award*, p. 23 (Nov. 29, 2001).

¹³ See *AT&T and TCG Petition for Reconsideration of Initial Order*, p. 7 (Dec. 14, 2001). The FPSC held that in the six buildings where a condominium arrangement exists, AT&T "will be able to purchase cross-connect facilities to connect to BellSouth without having to collocate in BellSouth's portion of the building." *In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U. S. C. Section 252*, Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP, *Final Order on Arbitration*, pp. 86-87 (Jun. 28, 2001).

¹⁴ See *BellSouth Telecommunications Inc.'s Response to AT&T's Motion for Reconsideration*, p. 5 (Jan. 14, 2002).

¹⁵ See *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 425 (D.C. Cir. 2000).

¹⁶ See *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 99-325, CC Docket No. 96-98, 11 FCC Rcd. 15,499, para. 573 (Aug. 8, 1996) (First Report and Order) & 15 FCC Rcd. 17,806, para. 42 (Aug. 10, 2000) (Fifth and Further Notice of Proposed Rulemaking).

¹⁷ *Final Order of Arbitration Award*, p. 27 (Nov. 29, 2001).

BellSouth's own admission, "the only customized routing solution that exists in the entire BellSouth region is a test deployment in Georgia."¹⁸

BellSouth asserts that the Arbitrators' conclusion is contrary to the law and the facts in the evidentiary record.¹⁹ Specifically, as to the Authority's finding based on BellSouth's admission, BellSouth contends that its testimony was not "an 'admission' in the pejorative sense, but rather simply reflected that no other [competing local exchange carrier ("CLEC")] has actually asked for customized routing."²⁰ BellSouth further claims that AT&T concedes that Advanced Intelligent Network ("AIN") technology and Line Class Codes ("LCCs") work.²¹ AT&T comments that BellSouth failed to offer new arguments or facts in support of its position.²² AT&T further asserts that the Arbitrators' ruling is based upon an observation that the only customized routing solution that exists is a test deployment in Georgia, a fact that BellSouth does not dispute.²³

The evidentiary record before the Arbitrators clearly demonstrates that, to date, BellSouth has only one test deployment of customized routing throughout its region and that deployment is located in Georgia. The Arbitrators ruled that BellSouth must demonstrate that it is capable of providing customized routing to specific service areas within Tennessee before BellSouth can obtain relief. BellSouth must make this demonstration regardless of whether CLECs have requested such service. Facts demonstrating that BellSouth is capable of providing customized routing to specific service areas within Tennessee do not exist in the evidentiary record and were not provided by BellSouth in BellSouth's Motion. Moreover, AT&T's comments on whether AIN and LCC

¹⁸ *Id.*

¹⁹ *See BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification*, p. 7 (Dec. 14, 2001).

²⁰ *Id.* at 5.

²¹ *See id.* at 6.

²² *See AT&T's Memorandum in Opposition to BellSouth Telecommunication, Inc.'s Motion for Reconsideration and Clarification*, pp. 4-5 (Dec. 27, 2001).

²³ *See id.*

technology works were qualified by AT&T's assertion that it encountered delays when using AIN and by the fact that BellSouth's question regarding LCC contained assumptions.²⁴ For the foregoing reasons, the Arbitrators voted that the *Final Order of Arbitration Award* shall stand as issued.

VII. ISSUE 15 - WHAT PROCEDURE SHOULD BE ESTABLISHED FOR AT&T TO OBTAIN LOOP-PORT COMBINATIONS (UNE-P) USING BOTH INFRASTRUCTURE AND CUSTOMER SPECIFIC PROVISIONING?

In the *Final Order of Arbitration Award*, the Arbitrators determined: 1) "BellSouth should be required to provide AT&T with the capability to order selective OS/DA routing with a single code"; 2) "BellSouth may not require AT&T to provide LCCs for its routing selections"; and 3) "BellSouth must provide electronic flow-through for selective OS/DA ordering if it or one of its affiliates provides itself with the same functionality."²⁵

BellSouth requests that the Arbitrators clarify this ruling and, depending on that clarification, reconsider the ruling as well. BellSouth states:

The Authority ordered BellSouth to provide AT&T with the capability to order selective OS/DA routing with a single code and to provide electronic flow-through for selective OS/DA routing if BellSouth has the same functionality. BellSouth is perfectly willing to do this if the Authority meant that AT&T was to select for the state . . . and if AT&T selects single routing, BellSouth can provide that routing without AT&T having to provide line class codes or any other information.

An issue arises, however, if the Authority intended to order that BellSouth accept any one of four indicators (such as the numbers 1, 2, 3 and 4) and intended for BellSouth to allow the order to flow through without any manual intervention.²⁶

AT&T asserts that the Authority "adequately and clearly" addressed this issue in the *Final Order of Arbitration Award*.²⁷ Further, AT&T contends that BellSouth has failed to support its position by

²⁴ Transcript of Proceedings, Apr. 9, 2001, Vol. I-C, pp. 156-159 (Hearing).

²⁵ *Final Order of Arbitration Award*, p. 31 (Nov. 29, 2001).

²⁶ *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification*, p. 8 (Dec. 14, 2001).

²⁷ *AT&T's Memorandum in Opposition to BellSouth Telecommunication, Inc.'s Motion for Reconsideration and Clarification*, p. 6 (Dec. 27, 2001).

presenting new arguments or evidence or by identifying existing evidence that the Authority overlooked.²⁸

The decision in the *Final Order of Arbitration Award* is clear, thus, there is no need for clarification. As to the request for reconsideration, the Arbitrators, having fully considered BellSouth's arguments prior to deliberating this issue on September 25, 2001, voted that the *Final Order of Arbitration Award* shall stand as issued.

VIII. ISSUE 18 - WHAT SHOULD BE THE RESOLUTION OF THE FOLLOWING OSS ISSUES CURRENTLY PENDING IN THE CHANGE CONTROL PROCESS BUT NOT YET PROVIDED: a) PARSED CUSTOMER SERVICE RECORDS FOR PRE-ORDERING; b) ABILITY TO SUBMIT ORDERS ELECTRONICALLY FOR ALL SERVICES AND ELEMENTS; AND c) ELECTRONIC PROCESSING AFTER ELECTRONIC ORDERING, WITHOUT SUBSEQUENT MANUAL PROCESSING BY BELL SOUTH PERSONNEL?

As to Issue 18(a), the Arbitrators ordered BellSouth to "provide data to AT&T in a format that allows AT&T to transfer pre-ordering information into its own back-office systems and back to BellSouth's ordering interface."²⁹ As to Issue 18(b) and (c), the Arbitrators concluded: "BellSouth must provide electronic ordering, without manual intervention, for all network facilities which BellSouth or its retail affiliates are capable of ordering electronically without manual intervention."³⁰

BellSouth requests that the Arbitrators clarify their decision on Issue 18(b) and (c) and, depending on that clarification, reconsider the decision as well. BellSouth asserts that the Authority's order does not address the dispute brought before the Arbitrators under Issue 18(b).³¹

BellSouth characterizes the Arbitrators' resolution of Issue 18(b) as answering the question of "whether AT&T must be able to submit every order it wants to submit electronically, rather than

²⁸ See *id.* at 7.

²⁹ *Final Order of Arbitration Award*, p. 39 (Nov. 29, 2001).

³⁰ *Id.* at 40.

³¹ See *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification*, p. 13 (Dec. 14, 2001).

having its service representative take down the order and then transmit the order to BellSouth by facsimile.”³² BellSouth next asserts that because it does not electronically transmit its own complex orders, it does not have to provide AT&T with that functionality. BellSouth argues that the Arbitrators must determine whether “BellSouth submits its complex orders electronically or whether it submits them in the same manner as AT&T.”³³ As to Issue 18(c), BellSouth contends that the FCC did not intend the result reached by the Arbitrators.³⁴ AT&T argues that BellSouth is attempting to confuse the pre-ordering and ordering processes and asserts that AT&T is only seeking that which BellSouth provides for its customers.³⁵

During the deliberations, the Arbitrators voted to clarify the *Final Order of Arbitration Award* on Issue 18(b) and (c) by making two additional findings. First, the Arbitrators found that BellSouth has the ability to submit complex orders electronically and AT&T can not submit complex orders electronically.³⁶ Second, the Arbitrators found that BellSouth has services the ordering of which requires manual processing after the order successfully exits the Service Order Confirmation System. Pursuant to Section 251 of the Telecommunications Act of 1996, BellSouth has no obligation to provide flow-through ordering to AT&T for these services.

IX. ISSUE 19 - SHOULD BELL SOUTH PROVIDE AT&T WITH THE ABILITY TO ACCESS, VIA EBI/ECTA, THE FULL FUNCTIONALITY AVAILABLE TO BELL SOUTH FROM TAFI AND WFA?

In the *Final Order of Arbitration Award*, the Arbitrators voted to require BellSouth to provide for CLEC usage an integratable system that uses existing industry standards and incorporates

³² *Id.*

³³ *Id.*

³⁴ *See id.* at 15.

³⁵ *See AT&T's Memorandum in Opposition to BellSouth Telecommunication, Inc.'s Motion for Reconsideration and Clarification*, pp. 7-8 (Dec. 27, 2001).

³⁶ Transcript of Proceedings, Apr. 10, 2001, Vol. II-B, pp. 146-47, 156-57 (Hearing).

the functionality present in the Trouble Analysis Facilitation Interface ("TAFI").³⁷ In support of this conclusion, the Arbitrators found that BellSouth does not offer CLECs the same functionality that BellSouth receives through its repair and maintenance OSS.³⁸ The Arbitrators further determined that the lack of integrability of TAFI is the barrier that prevents non-discriminatory access to all of BellSouth's repair and maintenance functionality.³⁹

BellSouth argues that the *Final Order of Arbitration Award* will increase OSS costs for all CLECs.⁴⁰ BellSouth also asserts that there is no existing industry standard format for the interface the Arbitrators ordered BellSouth to produce.⁴¹ To resolve this issue, BellSouth proposes that the Authority find that AT&T already receives all that it is entitled to receive and direct AT&T to submit a bona fide request for the interface if it so chooses.⁴² AT&T counters that BellSouth is simply reiterating arguments already presented to the Arbitrators.⁴³

BellSouth has not provided any arguments or evidence that were not before the Arbitrators prior to the September 25, 2001 deliberations. Moreover, BellSouth does not contend that the Arbitrators erred with respect to the law or factual record. Therefore, the Arbitrators voted that the *Final Order of Arbitration Award* shall stand as issued.

X. ORDERED

BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification and *AT&T and TCG Petition for Reconsideration of Initial Order* are granted to the extent that the Arbitrators have clarified their decisions on Issues 10 and 18(b) and (c) as set forth herein.

³⁷ See *Final Order of Arbitration Award*, p. 42 (Nov. 29, 2001).

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification*, p. 18 (Dec. 14, 2001).

⁴¹ See *id.*

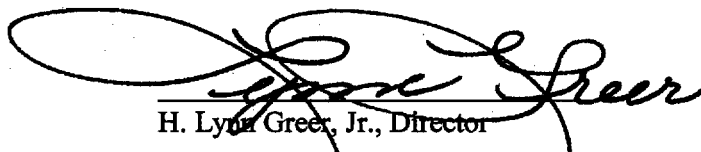
⁴² See *id.* at 20.


⁴³ See *AT&T's Memorandum in Opposition to BellSouth Telecommunication, Inc.'s Motion for Reconsideration and Clarification*, p. 10 (Dec. 27, 2001).

BellSouth Telecommunications, Inc, AT&T Telecommunications, Inc., and TCG Mid-South, Inc.
shall file their interconnection agreement no later than thirty days following the issuance of this
Order.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin Malone, Director

ATTEST:


K. David Waddell, Executive Secretary